

Examination Guidelines for Computer-Related Inventions

Final Version

Patent and Trademark Office

United States Department of Commerce

(a) **Functional Descriptive Material: "Data Structures"**
Representing Descriptive Material *Per Se* or Computer
Programs Representing Computer Listings *Per Se*

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are neither physical "things" nor statutory processes.³⁰ Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the medium which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical "things," nor are they statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed aspects of the invention which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer program and the medium which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material *per se* from claims that define statutory inventions.

Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence non-statutory.

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program